

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HERBALIST & ALCHEMIST, INC.,

Plaintiff,

Civil No. 16-cv-9204 (ER)

-against-

ALURENT PRODUCTS, INC. and WILL CLARENT,

Defendants.
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**AFFIDAVIT OF ELIZABETH
LAMBERT IN SUPPORT OF
THE ORDER TO SHOW
CAUSE TO ENFORCE
VIOLATIONS OF A COURT
ORDER AND PERMANENT
INJUNCTION**

STATE OF NEW JERSEY)
) s.s.:
COUNTY OF WARREN)

ELIZABETH LAMBERT, being duly sworn under penalty of perjury, deposes and says:

1. I am the Chief Executive Officer of Plaintiff Herbalist & Alchemist, Inc. ("Herbalist"). I make this affidavit in support of Plaintiff's application for an order to enforce violations of this Court's March 8, 2017 Order, permanently enjoining Defendants and their agents or all others in active concert from engaging in any infringing use of Herbalist's trademark (the "Mark").

2. Since 1981, Herbalist has owned all right, title and interest to the trademark HERBALIST & ALCHEMIST. Herbalist operates a website at herbalist-chemist.com, through which our products are currently sold. My company has spent tens of thousands of dollars each year in advertising and promoting the goods sold under the Mark in the United States and internationally. Herbalist's extensive use of the Mark in commerce has caused the public to associate goods and services bearing the Mark with Herbalist. The Mark is therefore well known and is a highly valuable asset of Plaintiff that represents substantial goodwill.

3. Since May 2016, Herbalist's customers and others have continuously contacted Herbalist about products that it does not sell because of Defendants' infringing activity. Some

such products are CBD (Cannabidiol), Aronia, Cold & Sinus, Green Tea, Brain Focus, 5-HTP, ARSNL CLA: Weight Loss & Fat Burner CLA Supplement, all of which are sold by Defendants.

4. Despite the Court's March 8 Order, Defendants continue to distribute dietary and nutritional supplements as well as cosmetics under the name "herbalalchemist" and on their website, www.herbal-alchemist.com (which I understand is only temporarily disabled).

5. In addition, I have learned that Defendants utilize the website, www.nfinx.com to market, promote and sell their infringing dietary nutritional supplements under the name, "herbalalchemist" and Nfinx, Inc., its domain host, Namecheap.com, and its domain registrar, GoDaddy.com, have ignored Herbalist's demands to comply with the Court Order and take down and remove the infringing content.

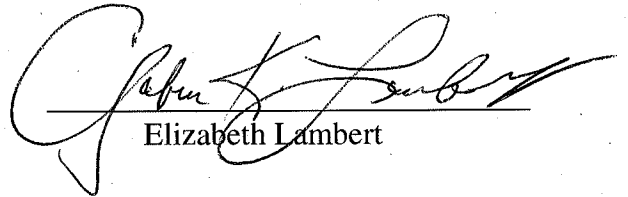
6. I have also learned through Herbalist's customers that Defendants have made unlawful and false claims concerning the products they sell. Herbalist's customers have been led to believe that it was Herbalist making such claims. As a result of an investigation supervised by Herbalist's attorneys, we have confirmed that Defendants' labels on their products were false. True and correct pictures of Defendants' products are attached hereto as **Exhibit 1**.

7. To date, Herbalist continues to receive customer complaints about Defendants' products. Just one example is attached hereto as **Exhibit 2**, which is a customer email dated May 10, 2017. Customers and others continue to experience confusion and consistently mistake Defendants' products and promotion as being Herbalist's work and product. I am certain that Defendants chose to use a mark that was so similar to Plaintiff's Mark in order to benefit from Herbalist's hard-earned reputation and brand.

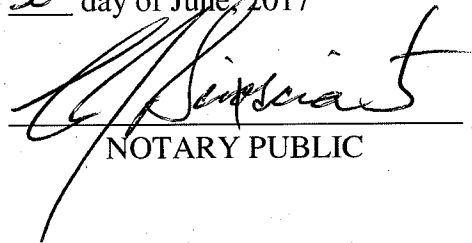
8. Herbalist has continued to suffer irreparable harm to its reputation and good will by Defendants' actions in completely ignoring this Court's Order. Despite being made aware of this Court's Order by Herbalist's attorneys, Defendants are able to continue promoting its sales through third parties such as Facebook, Amazon, Twitter, YouTube, Nfinx, AT&T and Groupon,

which continue to advertise, promote and sell Defendants' products. Defendants' registrar, Enom refuses to cancel and de-register Defendants confusingly similar herbal-chemist.com domain name, even though it has been made aware of the Court's Order by Herbalist's attorneys, expressly directing the same.

9. Let's Encrypt, which has also received notice of this Court's Order, continues to defiantly allow Defendants to use the SSL Certificate issued to them. The SSL Certificate permits Defendants to sell their infringing product on the internet to customers who use credit cards.


Elizabeth Lambert

Sworn to before me this
30th day of June, 2017


NOTARY PUBLIC

EXP. 18 July 2017